IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1493

GLADSTONE REALTORS, *et al.*,
Petitioners,
vs.
VILLAGE OF BELLWOOD, *et al.*

ROBERT A. HINTZE REALTORS, *et al.*,
Petitioners,
vs.
VILLAGE OF BELLWOOD, *et al.*

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS *AMICUS CURIAE*

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TABLE OF CONTENTS

TABLE OF CITATIONS

CASES: Page

TABLE OF CITATIONS—Continued

Page

TABLE OF CITATIONS—Continued

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Interest of *Amicus Curiae* *

The Lawyers' Committee for Civil Rights Under Law was organized in 1963 at the request of the President of the United States to involve private attorneys throughout the country in the national effort to assure civil rights to

* The parties' letters of consent to the filing of this brief are being filed with the clerk pursuant to Rule 42(2).

all Americans. The Committee's membership today includes former Attorneys General, past Presidents of the American Bar Association, former Solicitors General, a number of law school deans, and many of the nation's leading lawyers. Through its national office in Washington, D.C., and its offices in Jackson, Mississippi and eight other cities, the Lawyers' Committee over the past fifteen years has enlisted the services of over a thousand members of the private bar in addressing the legal problems of minorities and the poor in voting, education, employment, housing, municipal services, the administration of justice, and law enforcement.

The Lawyers' Committee and its local committees, affiliates, and volunteer lawyers have been actively engaged in providing legal representation to those seeking relief under federal civil rights legislation. That litigation includes cases raising housing discrimination issues similar to those presented here. Our interest in this case, however, involves the most basic concern of the Lawyers' Committee: the right of Americans to have their claims for civil rights adjudicated on the merits in federal court.

The instant case is a challenge under the Fair Housing Act of 1968 to discriminatory action based on race: the alleged limitation or exclusion of minority-race citizens from residence in a community by the action of realtors and real estate salesmen. The court of appeals has held, correctly in our view, that those who are indirectly affected and injured by such discrimination, as well as its most immediate and direct objects, have "standing" in the federal courts to present the challenge. Petitioners urge, however, that this Court pronounce a far narrower rule limiting effectuation of the rights established by the Congress to only those persons having a fully matured intention and ability to purchase realty at the time discriminatory acts directed toward them individually take place. A limitation of this sort would cripple our efforts, and

those of others, to open to minority Americans housing opportunities which until now have been closed to them because of their race.

Such a ruling would be inimical to the congressional purposes and national policy underlying most, if not all, of the substantive and jurisdictional civil rights legislation, including in particular the 1968 Fair Housing Act. The approach to standing under that statute urged by petitioners, and adopted by the Ninth Circuit in *TOPIC* v. *Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), cannot be harmonized with the statutory language, the legislative history, or this Court's past rulings. Because *amicus* believes that a civil rights statute should be given "a sweep as broad as its language" and that the federal courts "are not at liberty to seek ingenious analytical instruments" [1] for evading congressionally mandated civil rights jurisdiction, we have a vital interest in this case which is broader than that of the immediate litigants. The Lawyers' Committee therefore files this brief as friend of the Court urging affirmance, but addresses only the critical standing issues under the Fair Housing Act.

Statement

The relevant facts are not in dispute. Individual respondents, six residents of Bellwood and one resident of adjacent Maywood, Illinois, visited petitioners' real estate sales offices in 1975 to inquire about available housing in the area. On these visits, black and white individuals or couples represented themselves to have similar interests and desires with respect to size, quality and location of housing. Respondents found that they were treated differently, and shown housing in different areas, depending upon the color of their skin. Joined by the Village of Bellwood and the Leadership Council for Metropolitan

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[1] *Jones* v. *Mayer Co.*, 392 U.S. 409, 437 (1968).

Open Communities, the individual respondents then filed suits under the Fair Housing Act of 1968, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3612, and the Civil Rights Act of 1866, 42 U.S.C. § 1982.

The district court dismissed the actions on the ground that all plaintiffs lacked standing, although it indicated that at least the individual respondents would have had standing under § 810 of the Fair Housing Act, 42 U.S.C. § 3610, had they filed administrative complaints with the Department of Housing and Urban Development (HUD) before commencing suit. On appeal, the Seventh Circuit reversed as to the individual respondents and the Village of Bellwood.

Summary of Argument

Since, as established below, the individual respondents have an enforceable right under the Fair Housing Act of 1968 to reside in an integrated community whose housing market is open to persons without regard to race, they have standing under Article III to attack discriminatory practices which directly affect this right under *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972), even though they themselves were not excluded from such communities or were not members of the racial group which was subjected to the discriminatory practices.

Moreover, because the petitioners' alleged racial steering denied the individual respondents other rights guaranteed them by the Fair Housing Act—the right to equal treatment by realtors without regard to race or color—there is an independent ground for standing under Article III which does not implicate the "prudential" standing rules restricting litigation of third-party rights.

The Fair Housing Act affords *all* persons the right to equal treatment by realtors without regard to race or color in 42 U.S.C. § 3604(a), which prohiibts racial discrimination in negotiating for the sale or rental of housing or "otherwise mak[ing] unavailable or deny[ing]" such housing. Thus, respondents, even though they are not bona fide offerors, have standing to contest direct injuries *sustained by them* when racial steering precludes negotiation for and "otherwise makes unavailable or denies" housing because of race or color. The statutory language itself, its history and relevant case law establish that respondents' reading of the critical language is correct.

The 1968 Fair Housing Act, as interpreted by this Court in *Trafficante*, *supra*, establishes respondents' right to live in an integrated society. Petitioners' suggestion that this right is geographically limited to a single apartment complex cannot withstand reasoned analysis. Thus, the court of appeals' ruling sustaining respondents' standing to sue on this basis was correct.

The Village of Bellwood, too, has standing on several different grounds. First, as recognized by the court of appeals, the petitioners' alleged racial steering causes injury to the Village's resources and tax base. Second, it is a "person aggrieved" by discriminatory practices which the Fair Housing Act outlaws. Third, at least with respect to injunctive relief, the Village has a form of *parens patriae* standing to end conditions which injure its citizens.

ARGUMENT

Introduction

Petitioners here urge on both statutory and constitutional grounds that the district court correctly dismissed these actions. They agree with the construction of the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 *et seq.*, first enunciated in *TOPIC* v. *Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976). That interpretation would strictly limit the right to sue under § 3612 to those parties against whom discriminatory acts are

primarily directed—*i.e.*, to minority persons who are prevented from buying or leasing housing—while recognizing a broader right to sue under § 3610 (including others affected by discriminatory devices) following filing of complaints with HUD. Since these actions were originally commenced by respondents under § 3612 without following the administrative route, that construction of the statute would be dispositive.

However, petitioners also argue that whatever the correct interpretation of the statute, respondents are without standing to sue under Article III of the Constitution. We demonstrate first, therefore, that the respondents have alleged personal, direct injury resulting from petitioners' conduct sufficient to show the existence of a "case or controversy" within the federal judicial power; and second, that the Fair Housing Act authorizes them to sue for redress without exhausting the Act's alternative administrative remedy.

I

Individual Respondents Have Standing To Sue To Enforce Their Rights To Nondiscriminatory Access To The Housing Market And To An Integrated Community Within Which To Live

The individual respondents in these cases have suffered [2] two quite distinct injuries as a result of petitioners' conduct, either of which is sufficient to confer Article III standing.[3] As persons who sought access to the housing market, they were injured by the actions of the

[2] The district court in these cases granted motions for summary judgment on the basis of a lack of standing. Under the circumstances, the allegations of the complaints must be taken as true. *E.g., Jenkins* v. *McKeithen*, 395 U.S. 411 (1969).

[3] We deal in Argument III, *infra*, with the question whether the Congress intended that judicial redress of these injuries be available under 42 U.S.C. § 3612 without resort to the administrative complaint process of HUD, *see* 42 U.S.C. § 3610.

petitioners which directly restricted their access on grounds of race or color. As citizens of Bellwood and its environs, they were injured because petitioners' actions directly impeded their right to live in an integrated community (in which the housing market is open to all without limitation on the basis of race or color).

A. Respondents' Allegations Of Direct Injury Flowing From Petitioners' Conduct Distinguish These Cases From Recent Decisions Of This Court In Which A Lack Of Standing To Sue Was Found

This case raises the question not reached in *Warth* v. *Seldin*, 422 U.S. 490, 513 n.21, 514 (1975)—the extent to which the Fair Housing Act of 1968, by creating an enforceable right to reside in communities to which access is not limited by racial discrimination, permits suits to eliminate discriminatory practices to be brought by individuals who either were not themselves excluded from such communities, or who are not members of the minority groups sought to be excluded.[4] In *Trafficante* v. *Metropolitan Life Ins. Co.*, *supra*, this Court recognized that the Act expanded "standing" to its constitutional limits and permitted such suits, at least by residents of the same apartment complex in which discrimination was alleged to have taken place. Whether residents of the same city or metropolitan area alleged to be affected by discrimination also have standing was not decided in *Warth* because plaintiffs in that case made no claim under the 1968 Act. 422 U.S. at 514. Hence the issue is one of first impression here.

[4] The court of appeals viewed the Act as authorizing such suits and declared that respondents had standing on this ground. It relied on *Trafficante*, *see* text *supra*, in holding that prudential standing limitations did not bar respondents from litigating to enforce the rights of those whom petitioners allegedly sought to bar from residence in Bellwood because of their race or color.

The individual respondents also have standing by virtue of their allegations that petitioners denied them *other* rights guaranteed by the Fair Housing Act. *See* § I-B *infra*. In our view, these allegations do not implicate the "prudential" standing rules restricting litigation of third-party rights[6] and they distinguish this case from *Warth* and other recent decisions of this Court in which various plaintiffs were found to lack standing to sue in federal court.[7]

Unlike the plaintiffs in *Warth* (who had no direct contact with defendant Town of Penfield officials[8] whose actions allegedly impinged on plaintiffs' claimed right to live in Penfield and on intervenors' claimed right to build low- and moderate-income housing in the Town), individual respondents in these cases went to the petitioners' offices to seek housing. Their claims of discrimination are based on experiences *personal to them*, not upon the presumed effect of petitioners' conduct toward others.[9] Thus,

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[6] *See* note 5 *supra*.

[7] *Amicus* primarily argues respondents' standing on this ground (*see* § I-B *infra*), which involves recognition of important interests secured by the Fair Housing Act but not perceived by the courts below or by the Ninth Circuit in *TOPIC*, *supra*. *Compare Grant* v. *Smith*, 574 F.2d 252 (5th Cir. 1978) (*per curiam*). Contrary to the suggestion in Petitioners' Brief at 41 n.15, respondents have never conceded that they suffered no injury by virtue of denial of their "right to select housing without regard to race." Their only admission was that they did not intend to make *bona fide* offers to purchase. *Compare* Petition for Writ of Certiorari, Appendix at 2 n.1 (opinion of district court). *Amicus* also supports the rationale of the court of appeals. *See* § I-C and Argument II *infra*.

[8] The exception was the Penfield Better Homes Corporation, but this Court found the allegations of the complaint and supporting papers insufficient to demonstrate a current, live controversy between that member of the Housing Council and the Town. 422 U.S. at 517.

[9] It is doubtless true that in order to make out a case on the merits, and to justify particular relief, respondents are likely to ask the district court to draw inferences from their personal experiences—such as the inference that the racial steering to which they were allegedly subjected is typical of petitioners' practices. But that does not detract from respondents' personal involvement with the agents of the alleged discrimination, an involvement which this Court found missing in *Warth*.

this matter involves neither an indirect form of discrimination nor the possibility that the discrimination will continue even if the practices which respondents' suits attack are changed. In *Warth*, the plaintiffs' allegations

> suggest[ed] . . . that their inability to reside in Penfield is the consequence of economics of the area housing market, rather than of respondents' assertedly illegal acts.

422 U.S. at 506. Here, on the contrary, the allegation is that petitioners engage in racial steering of prospective home buyers in and around Bellwood in violation of federal law, that they practiced such steering directly upon respondents when respondents visited their offices, and that such steering violates respondents' right to live in communities to which access is not limited by racially discriminatory practices. Clearly, if respondents succeed in this litigation, judicial relief will end such conduct toward them by petitioners.

The personal involvement of the individual respondents with petitioners also distinguishes this case from *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976). There it was alleged that defendants' actions encouraged *others* to make decisions about the provision of free medical care which directly affected plaintiffs. *See* 426 U.S. at 42-44. Here, petitioners' racial steering was aimed at the respondents personally (when they visited petitioners' offices) and directly affected the communities in which respondents reside.[9]

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[9] *Simon* is also different from this case because it involves a challenge to the tax liability of another. *See* 426 U.S. at 46 (Stewart, J., concurring). *See also, Linda R.S.* v. *Richard D.*, 410 U.S. 614, 617-18 (1973) (". . . in the unique context of a challenge to a

Petitioners suggest also that the respondents lack standing because they alleged only a "generalized" or "abstract" injury. *E.g.*, Brief for Petitioners at 43-44. In one sense, this is an argument that the rights guaranteed by the statute do not extend beyond residents of the same apartment house to residents of the same municipality or metropolitan area, *see id.* at 50-51, and is addressed in Argument III, *infra*. In another sense, however, it represents a misapplication of the principles enunciated by this Court in *Schlesinger* v. *Reservists to Stop the War*, 418 U.S. 208 (1974), and other cases.[10] Those rulings establish that individuals who can allege no injury greater than that suffered by all other citizens as the result of governmental action lack standing to challenge the action in federal court. But an injury is not so generalized as to be without the scope of Article III simply because it is suffered by a large number of individuals. *United States* v. *SCRAP*, 412 U.S. 669, 687-88 (1973). The fact that all residents of Bellwood and neighboring communities are denied the rights guaranteed them by the Fair Housing Act when realtors who sell homes in Bellwood practice racial steering in no sense reduces or eliminates the injury suffered by each resident because of such practices. *Id.*, 412 U.S. at 687.

We thus turn to the statute under which respondents filed suit. For it is clear, as demonstrated above, that if the Fair Housing Act by its terms creates the substantive rights which respondents here claim, petitioners' actions have invaded those rights, and caused injury to respondents.[11] *Warth* v. *Seldin*, *supra*, 422 U.S. at 514.

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criminal statute, appellant has failed to allege a sufficient nexus between her injury and the government action which she attacks to justify judicial intervention").

[10] *E.g.*, *O'Shea* v. *Littleton*, 414 U.S. 488 (1974); *United States* v. *Richardson*, 418 U.S. 166 (1974).

[11] Of course, statutes cannot remove the Article III requirement of an actual case or controversy. But these suits are brought by plaintiffs whose personal involvement with the defendants satisfies that requirement and makes judicial determination of their claims possible. The policy behind the Article III requirement which resulted in dismissal in *Warth* and *Simon* requires that federal courts decide legal issues only in suits brought by parties who can show how those issues arise in concrete factual settings. To satisfy the standing requirement, the parties must, at the least, allege their ability to make such a presentation based on first-hand knowledge and experience (personal injury). *Compare Sierra Club* v. *Morton*, 405 U.S. 727, 735 (1972) *with United States* v. *SCRAP*, *supra*, 412 U.S. at 685. This prerequisite was met by the plaintiffs in the instant cases.

B. The Individual Respondents Have Standing To Prosecute These Actions Because The Fair Housing Act Affords All Persons The Right To Equal Treatment By Realtors Without Discrimination On The Basis Of Race Or Color

In their complaint, the individual respondents asserted that the alleged racial steering to which they were subjected by petitioners denied "their right to select housing without regard to race." *Village of Bellwood* v. *Gladstone Realtors*, 569 F.2d 1013, 1015 (7th Cir.), *cert. granted*, 46 U.S.L.W. 3765 (June 12, 1978). This claim was rejected by the district court, and as well by the court of appeals, which sustained individual respondents' standing on the ground discussed in § I-C, below. These views are, we submit, in error.

In *Trafficante* v. *Metropolitan Life Ins. Co.*, *supra*, 409 U.S. at 211, this Court agreed with then Senator Mondale's statement that the Fair Housing Act of 1968 was intended "to replace the ghettos 'by truly integrated and balanced living patterns.' 114 Cong. Rec. 3422." Consistent with this characterization, the statute identifies expansively the discriminatory practices which it is intended to outlaw. 42 U.S.C. § 3604(a) makes it unlawful

> To refuse to sell or rent after the making of a bona fide offer, *or to refuse to negotiate* for the sale or rental of, or *otherwise make unavailable or deny*, a

> dwelling *to any person* because of race, color, religion or national origin.

(emphasis supplied). The italicized terms are very broad indeed. The "refusal to negotiate" language is independent of the limiting words, "after the making of a bona fide offer," [12] which appear in the first phrase. Thus, reasoning from the very structure of the section, we believe that the court of appeals erred in concluding that

> . . . plaintiffs' discovery admissions that no bona fide homeseekers are in the case negatived the complaints' allegations that personal rights "to select housing without regard to race" are implicated here . . . .

569 F.2d at 1015. The statute confers on individuals the right to participate in negotiations for the sale or rental of property free from racial discrimination whether or not they have a *bona fide* intention to follow through with actual lease or purchase. The practice of racial steering constitutes a self-imposed limitation (on the ground of race or color) of a realtor's willingness to negotiate.[13]

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[12] One court has suggested that it is these words which have prompted decisions holding that "testers" have no standing. *Meyers* v. *Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894, 898 n.4 (3d Cir. 1977).

[13] Racial steering practices uniformly have been held to be within the coverage of the Act, though generally on the theory that they are included within § 3064(a)'s catchall phrase, "otherwise make unavailable or deny." *E.g.*, *Zuch* v. *Hussey*, 394 F. Supp. 1028, 1047 (E.D. Mich. 1975), *aff'd and remanded*, 547 F.2d 1168 (6th Cir. 1977) (*per curiam*); *Fair Housing Council* v. *Eastern Bergen County MLS*, 422 F. Supp. 1071 (D.N.J. 1976); *United States* v. *Real Estate One, Inc.*, 433 F. Supp. 1140 (E.D.Mich. 1977). *Cf. Moore* v. *Townsend*, 525 F.2d 482 (7th Cir. 1975). As Judge Stern said in *Fair Housing Council, supra*, 422 F. Supp. at 1075-76:

> The real estate broker and the multiple listing service are crucial intermediaries between buyers and sellers of residential real estate. The complaint fairly pleads that the influence of these intermediaries extends far beyond any one meeting of the minds between an individual purchaser and an individual seller.

The three phrases of § 3604(a) are in the disjunctive; each applies "*to any person*" but only the first is restricted by the language, "after the making of a bona fide offer." Thus, construing § 3604(a) broadly to effectuate the Congressional purpose "to provide, within constitutional limitations, for fair housing throughout the United States," 42 U.S.C. § 3601, the ban on racial steering extends to "testers" and other individuals who may not, at any given moment, be planning to make *bona fide* offers for the purchase or lease of particular property.

This reading of the statutory language is confirmed by the legislative history. Title VIII of the 1968 Civil Rights Act did not appear in the original House of Representatives version. It was added by an amendment on the Senate floor introduced by Senator Dirksen. 114 CONG. REC. 4570 (February 28, 1968). However, § 204(a) in Senator Dirksen's amendment omitted the language in question and would have made it a discriminatory practice

> To refuse to sell or rent, to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

114 CONG. REC. 4571 (February 28, 1968). The words "after the making of a bona fide offer or" were added subsequently, as the result of an amendment suggested by Senator Allott and accepted by the bill's Floor Manager, Senator Mondale. 114 CONG. REC. 5515-16 (March 6, 1968).

When his amendment was brought up for discussion (cloture having been invoked on the bill), Senator Allott was very specific about its reach and effect. He stated that it

> . . . applies to sale or rental—the first four words only of line 7.
>
> It will be noted that the latter part of paragraph (a) is not conditioned upon a bona fide offer, because the

> amendment as offered concludes with the word "or" rather than "and."

114 CONG. REC. 5515 (Mar. 6, 1968). On this basis, the amendment was accepted by Senator Mondale and incorporated into the bill. *Id.* at 5516-17.[14]

In addition, 42 U.S.C. § 3604(b) prohibits discrimination because of race or color

> against any person *in the terms, conditions* of sale or rental of a dwelling, or *in the provision of services or facilities in connection therewith* . . .

(emphasis supplied). Just as requiring more onerous application procedures for blacks can be viewed as discrimination in the terms or conditions of sale or rental, *cf. United States* v. *Youritan Constr. Co.*, 370 F. Supp. 643, 648 (N.D. Cal. 1973), *modified as to relief and aff'd*, 509 F.2d 623 (9th Cir. 1975) (holding such conduct to be within "otherwise make unavailable or deny" language of § 3604(a)), so may racial steering practices be interpreted to be within the prohibitions of this subsection, which bars these prohibited practices from being applied to "any person."

[14] There was no discussion of this language in the House, which passed the Senate version of the bill without change. Ironically, petitioners' extended discussion of the statutory history of the "bona fide offer" language of § 204(a) in Brief for Petitioner at 31-33 underscores the position of Amicus: only with respect to allegations that an owner or lessor "refuse[d] to sell or rent" must a bona fide offer be shown. Senators Allott, Mondale and Cooper were sensitive to potential harassment of real estate owners and lessors "when the person *offering to rent or to buy* had no intention of renting or buying." Remarks of Sen. Cooper, quoted in Brief for Petitioner at 33. Where, as here, a violation of the statutory prohibition against "*refus[ing] to negotiate*" or "*otherwise mak[ing] unavailable* or *deny[ing]*" housing is alleged, the statute reasonably does not require a bona fide offer since, of course, there is seldom occasion for an offer when the other party "refuse[s] to negotiate" or "otherwise make[s] unavailable or den[ies]" housing on the basis of race. Similarly, an offer would be unlikely if there are illegal false representations that a "dwelling is not available for inspection, sale or rental".

Finally, § 3604(d) makes it illegal

> To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

Racial steering constitutes an implicit, if not a verbal, representation about the availability of housing. Hence it can be considered within the reach of this subsection. *Compare United States* v. *Hunter*, 459 F.2d 205, 215 (4th Cir.), *cert. denied*, 409 U.S. 934 (1972) (implicitly discriminatory advertising; § 3604(c)); *United States* v. *Real Estate One, Inc., supra* n.13 (racial steering effect of assignment of black and white employees by realty firm).

Thus, we submit, the Fair Housing Act creates substantive rights of nondiscriminatory access to the housing market in favor of *any person*, not just persons who make "bona fide offers" to purchase or lease property. The issue here presented was recently determined by the Court of Appeals for the Fifth Circuit in *Grant* v. *Smith*, 574 F.2d 252, 255 (1978) (*per curiam*), where the Court said:

> Both section 1981 and section 1982, as they apply here, relate to protection of minority rights to contract for, to purchase, and to lease real property. In a similar vein, section 3604(b) protects the right to buy or rent without racial distinctions. The plaintiffs' good faith or lack of it would be pertinent to the claims asserted under these statutory provisions. The same is not true, however, as to the claims asserted under sections 3604(a) and (d) which prohibit the refusal to negotiate about or allow inspection of a dwelling because of race. *Both negotiation and inspection involve aspects of real estate dealing which often precede the formation of any intent to buy or rent on the part of a prospective customer. To require a bona fide offer in such circumstances*

could render these protective provisions of section 3604 meaningless. [emphasis supplied]

The rights protected under the Fair Housing Act may be enforced by individuals whose attempts to exercise them are motivated by a desire to "test" compliance with the law, as well as by individuals with diverse other motivations. This Court has never questioned the standing of "testers." In *Evers* v. *Dwyer*, 358 U.S. 202, 203 (1958), the district court had dismissed a challenge to Tennessee's mandatory public transportation segregation law because the plaintiff "had ridden a bus in Memphis on only one occasion and had 'boarded the bus for the purpose of instituting this litigation.'" Reversing unanimously, this Court said (*id.* at 204):

> We do not believe that appellant, in order to demonstrate the existence of an "actual controversy" over the validity of the statute here challenged, was bound to continue to ride the Memphis buses at the risk of arrest if he refused to seat himself in the space in such vehicles assigned to colored passengers. A resident of a municipality who cannot use transportation facilities therein without being subjected by statute to special disabilities necessarily has, we think, a substantial, immediate, and real interest in the validity of the statute which imposes the disability. See *Gayle* v. *Browder*, 352 U.S. 903, affirming the decision of a three-judge District Court (Ala.) reported at 142 F. Supp. 707. That the appellant may have boarded this particular bus for the purpose of instituting this litigation is not significant. See *Young* v. *Higbee Co.*, 324 U.S. 204, 214; *Doremus* v. *Board of Education*, 342 U.S. 429, 434, 435.

The same principle was applied in *Pierson* v. *Ray*, 386 U.S. 547, 558 (1967), where the Court said of out-of-state demonstrators:

> The petitioners had the right to use the waiting room of the Jackson bus terminal, and their deliberate exercise of that right in a peaceful, orderly, and inoffensive manner does not disqualify them from seeking damages under § 1983.

Accord, Smith v. *YMCA of Montgomery*, 462 F.2d 634, 645-46 (5th Cir. 1972); *Meyers* v. *Pennypack Woods Home Ownership Ass'n, supra* n.12, 559 F.2d at 898.

Furthermore, the doctrine that "bona fide intention to lease or purchase" is a necessary element of an individual's standing to challenge racial steering practices which violate the Fair Housing Act, is simply unworkable. It invites useless expenditure of time, energy and resources on factual questions which have little relationship to the purposes of the Act, in order to determine the subjective intentions of plaintiffs. In these cases, for example, petitioners' discovery focused on the individual respondents' motivations rather than on the issue of discrimination. The distinction also is overbroad and invites the sort of niggardly interpretation of remedial statutes which the Court has refused to countenance. *See, e.g., Trafficante* v. *Metropolitan Life Ins. Co., supra; Sullivan* v. *Little Hunting Park*, 396 U.S. 229 (1969). If respondents cannot sue to redress steering because they did not intend actually to purchase, what of couples lacking positive resolve to relocate who may spend a Sunday afternoon looking at available housing with real estate agents? If shown property sufficiently attractive to them, an intention to purchase might rapidly mature. *Cf. Ehlert* v. *United States*, 402 U.S. 99, 103-04 (1971) (late crystallization of conscientious objection); *Clay* v. *United States*, 403 U.S. 698, 702 (1971), *id.* at 710 (Harlan, J., concurring in the result) (same); *Welsh* v. *United States*, 398 U.S. 333, 336 (1970) (opinion of Black, J.) (same).

That these dangers are not entirely speculative is illustrated by the recent case of *Meyers* v. *Pennypack Woods Home Ownership Ass'n, supra* n.12. In that action brought under both the Fair Housing Act and 42 U.S.C.

§ 1982, the district court *inferred*, from the fact of the plaintiffs' residence, that he was "a 'tester' rather than a bona fide applicant for Pennypack housing," 559 F.2d at 897, and denied relief. The court of appeals interpreted this as a dismissal for lack of standing, *id.* at 898, and reversed.[15] Although the Third Circuit found it unnecessary to review the lower court's "finding of fact" on the subject, the history of the case suggests the mischief which results from the "bona fide intention" doctrine.[16]

C. The Individual Respondents Have Standing Because Petitioners' Discriminatory Practices Interfere With Their Right To Live In Integrated Communities

The court of appeals held that these suits should have been permitted to proceed to trial on the merits; that individual respondents had standing to sue to enjoin petitioners' racially discriminatory practices as residents of municipalities affected by those practices. It reasoned from the decision in *Trafficante*, *supra*, that the 1968 Fair Housing Act established respondents' right to "the social and professional benefits of living in an integrated society," a right which provided respondents with standing to challenge petitioners' racial steering of potential home buyers in the towns where respondents lived.[17] This

[15] Because the court of appeals concluded that plaintiff's Fair Housing Act claim was time-barred, 559 F.2d at 899, its holding with respect to standing applies technically only to the claim under § 1982. However, the logic of its ruling clearly holds as well for Fair Housing Act cases.

[16] It is worthy of note in this regard that some of the practices attacked by plaintiff Meyers were eventually altered, but only as the result of a consent decree in another suit under the 1968 Act commenced by the United States. *See United States* v. *Pennypack Woods Home Ownership Ass'n*, Civ. No. 76-2557 (E.D. Pa., November 14, 1977), EQUAL OPP. HOUS. ¶ 18,017 (P-H).

[17] Six of the individual respondents are residents of Bellwood; they alleged that white potential home purchasers were steered by petitioners away from Bellwood to other suburbs or to only certain

ruling was manifestly correct and should be affirmed. While the right to enjoy the benefits of interracial associations granted by the Fair Housing Act may not be so compelling as to overcome the limitations of the First Amendment, *see Linmark Associates* v. *Township of Willingboro*, 431 U.S. 85, 94-95 (1977) (citing *Trafficante*), it is surely an adequate basis for respondents' standing to sue under the Act.

Petitioners argue, however, that this substantive right has a geographical limitation—that, in the words of another court,

> . . . an apartment complex housing eight thousand two hundred tenants is, from an Article III point of view, different from a county with a population of over nine hundred thousand.

Fair Housing Council v. *Eastern Bergen County MLS*, *supra* n.13, 422 F. Supp. at 1080-81. We suggest that in the context of these challenges to racial steering practices, the difference does not affect the standing of the respondents.

Respondents here have much firmer standing under the Fair Housing Act than would the plaintiffs in *Warth* v. *Seldin*, *supra*, had they raised the statutory issue.[18] That challenge to the Town of Penfield's housing ordinances involved residents (members of Metro-Act) who could have claimed that the effect of the Town's zoning scheme was to deny them the benefits of interracial associations. *See*

areas within Bellwood. *See* Brief for Respondents in Opposition, at 3-4. The other respondent resides in Maywood—a suburb of Chicago adjacent to Bellwood. The racial steering alleged obviously affects the Bellwood residents. It is equally true that such steering (even if whites are encouraged to settle in Maywood) affects the remaining respondent's right to reside in an integrated community (Maywood) free from manipulation of its real estate market on the basis of race or color.

[18] *See* pp. 7-9, *supra*.

Brief *Amicus Curiae* of the Lawyers' Committee for Civil Rights Under Law, *Warth* v. *Seldin*, *supra*, at 16. But whether that interest of the Town's residents was affected would depend upon whether, in the absence of the zoning ordinances, minority citizens could reasonably be expected to reside in Penfield. These were precisely the sort of allegations which this Court found to be missing from the complaint, and to be fatal to the standing of the non-resident plaintiffs on the non-Title VIII claims in *Warth*. *See* 422 U.S. at 504-07. Here, to the contrary, the direct impact of petitioners' racial steering practices on the residential composition of Bellwood is evident: potential white home buyers who contact these firms will be prevented by petitioners' actions from even considering relocation in the Village and contributing to the preservation of its integrated character.

In *TOPIC* v. *Circle Realty*, *supra*, 532 F.2d at 1275, the Court suggested in *dictum* that residents of a metropolitan area lacked standing to challenge the racial steering practices of realtors under the Fair Housing Act because

> [i]t is quite possible that, even absent the defendants' discriminatory practices, Carson and Torrance would still be segregated communities.

This comment misconceives the nature of the inquiry. At best, it suggests that the plaintiffs' claim to standing in that suit would have been viewed more sympathetically by the court of appeals had all, rather than merely some, realty firms operating in the Los Angeles vicinity been made defendants. But the fact that an injunction against continued steering by some realtors will not by its terms end steering by others does not weaken the actual controversy between the named realtors and those living in the areas within which steering takes place. It is entirely different from the inability of a court—through an injunction requiring alteration of regulations of the Internal

Revenue Service—to compel hospitals to increase free care, *Simon* v. *Eastern Kentucky Welfare Rights Organization*, *supra*, or of a court—through an injunction requiring a change in a town's zoning plan—to compel the construction by third parties of low- and moderate-income housing within that town, *Warth* v. *Seldin*, *supra*.

Petitioners' claim, that the connection between residential segregation in the Bellwood area and their steering practices is attenuated and speculative, is best answered, we think, by Judge Stern in *Fair Housing Council* v. *Eastern Bergen County MLS*, *supra*, 422 F. Supp. at 1081:

> The alleged discriminatory housing practices and the effects of those practices would, if true, cause greater injury to the residents of Bergen County than the harm alluded to by the residents of the *Trafficante* housing complex. The fact that the alleged injury affects a large number of people in a large geographic area does not serve to attenuate it. On the contrary, it makes the harm more severe. Residents of an all white housing complex may need only to look to the next residential facility for the interracial associations they desire. If the allegations here are true, residents of Bergen County may have to go to an entirely different neighborhood or community. Similarly, a completely white building is less of a "ghetto" than a completely white neighborhood or community. That the *cordon sanitaire* has been drawn around an entire community rather than a single apartment complex does not render it lawful. This Court therefore holds that the residents of predominantly white neighborhoods have alleged injury in fact sufficient to confer standing to sue for violation of the Fair Housing Act, and respectfully declines to follow the contrary result suggested in *TOPIC* on appeal. The foregoing analysis applies equally with respect to residents of predominantly black neighborhoods or communities. These plaintiffs also have alleged the requisite injury in fact.

In *Trafficante*, this Court approvingly cited a decision of the Third Circuit in an employment discrimination action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, to support its conclusion that standing to sue under the 1968 Act is as broad as Article III permits. 409 U.S. at 209, citing *Hackett* v. *McGuire Bros.*, 445 F.2d 442 (3d Cir. 1971).[19] Similarly, in this case the Court should look to Title VII decisions which have permitted claims of racial discrimination to be raised by those who are harmed indirectly by discrimination in the workplace, but are not members of the race discriminated against, *EEOC* v. *Bailey Co.*, 563 F.2d 439, 452-53 (6th Cir. 1977), *cert. denied*, 46 U.S.L.W. 3555 (Mar. 6, 1978); *Waters* v. *Heublein, Inc.*, 547 F.2d 466 (9th Cir. 1976), *cert. denied*, 433 U.S. 915 (1977), or are not direct victims of the particular form of discrimination attacked in the suit, *Gray* v. *Greyhound Lines, East*, 545 F.2d 169 (D.C. Cir. 1976); *Lea* v. *Cone Mills Corp.*, 438 F.2d 86 (4th Cir. 1971).[20]

In the instant cases, the individual respondents are just as "aggrieved," *see Trafficante, supra*, 409 U.S. at 212 (White, J., concurring) by manipulation of the residential composition of their living environment at the hands of petitioners as were the *Trafficante* plaintiffs by such manipulation at the hands of those who managed the apartment complex in which they lived. Thus we believe the court of appeals' ruling sustaining their standing to sue on this basis was sound.

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[19] 42 U.S.C. § 2000e-5(b) permits a Title VII suit to be filed "by or on behalf of a person claiming to be aggrieved." The "person aggrieved" language also appears in Title VIII, 42 U.S.C. § 3610.

[20] Of course, the precise harm suffered by plaintiffs may affect the precise type of relief to which they are entitled. *Lea* v. *Cone Mills Corp., supra; cf. International Bhd. of Teamsters* v. *United States*, 431 U.S. 324, 356-357 (1977). But so long as plaintiffs suffer some injury, they have standing to sue.

II

The Village Of Bellwood Has Standing To Bring This Fair Housing Act Litigation

In their complaints, respondents averred that the petitioners steered potential white home buyers to areas other than the Village of Bellwood because in recent years the black population of that suburb has increased, and also that steering of clients within the village was practiced. The Village itself joined as a plaintiff in this litigation, and its standing was recognized by the court of appeals on the basis of the injury to the Village's resources and tax base (without determining whether it would also have standing as the representative of its citizenry). 569 F.2d at 1017. *Amicus* agrees with this result, and urges this Court also to recognize the Village's standing on any or all of several grounds.

First, if we are correct in our interpretation of 42 U.S.C. § 3612, *see* Argument III *infra*, then the scope of standing under that section is as broad as that under § 3610, and extends to anyone who could file a complaint with the Secretary of HUD, *i.e.*, to any "person aggrieved" by one or more of the discriminatory practices which the Fair Housing Act outlaws. *See Trafficante* v. *Metropolitan Life Ins. Co., supra*, 409 U.S. at 212 (White, J., concurring). Clearly, HUD would accept a complaint of racial steering filed by the Village of Bellwood. *See* 24 C.F.R. §§ 105.2(f), 105.12 (1977). And there seems no more reason to exclude governmental units from the term "person aggrieved" than there was to exclude such units from the term "person" in *Monell* v. *Department of Social Services*, 46 U.S.L.W. 4569 (June 6, 1978)—particularly since the word does not even appear in § 3612, but only in § 3610. Enlisting the nation's municipalities in the effort to end residential apartheid—the goal of the Fair Housing Act—can hardly be viewed as inconsistent with Congress' intent in passing the statute. *Cf. Linmark*

Associates, Inc. v. *Township of Willingboro, supra*, 431 U.S. at 97.

Second, at least where injunctive relief is at issue, a municipality ought to be recognized to possess a form of *parens patriae* standing to seek an end to conditions which injure its citizens, *see Hawaii* v. *Standard Oil Co.*, 405 U.S. 251 (1972); *Georgia* v. *Pennsylvania R.R. Co.*, 324 U.S. 439 (1945); *Kelley* v. *Carr*, 442 F. Supp. 346, 356-57 (W.D. Mich. 1977); *Burch* v. *Goodyear Tire & Rubber Co.*, 420 F. Supp. 82, 85-90 (D. Md. 1976), *aff'd* 554 F.2d 633 (4th Cir. 1977) (injury to general economy of state); *Maine* v. *M/V Tamano*, 357 F. Supp. 1097 (D. Me. 1973), similar to its standing to bring suit to enjoin a public nuisance, *e.g.*, *City of Louisville* v. *National Carbide Corp.*, 81 F. Supp. 177 (W.D. Ky. 1948).

Third, the Court of Appeals was plainly correct in its view that the racial steering allegedly practiced by petitioners causes real, tangible harm to governmental entities such as the Village of Bellwood. Although they are creatures of the States, and can in general exercise only such powers as are specifically delegated to them, municipalities are formed to further specific societal goals, to provide services and protection to their citizenry, and to administer responsibilities delegated to or imposed upon them by the States. *Cf. National League of Cities* v. *Usery*, 426 U.S. 833 (1976). Panic selling, manipulation of the housing market, and the decline in real estate values which can and often does accompany racial steering constitutes a serious threat to these vital interests of municipalities sufficient to afford them standing under the Fair Housing Act to seek elimination of such discriminatory practices.

On any or all of these grounds, the judgment below should be affirmed with respect to the Village of Bellwood.

III

Respondents May Bring Suit Under 42 U.S.C. § 3612 Without Exhausting Administrative Remedies As Required Under § 3610

Petitioners here, and the Ninth Circuit in *TOPIC* v. *Circle Realty, supra*, have constructed an interesting and superficially appealing argument which distinguishes between those persons who may bring Fair Housing Act suits under 42 U.S.C. §§ 3610 and 3612, respectively. The difficulty with that argument, however, is that it is flatly inconsistent with the statutory language and lacks the support of even a minute shred of legislative history.

As this Court detailed in *Trafficante, supra*, § 3610 establishes an administrative remedy commenced by the filing of a complaint with HUD. 409 U.S. at 208. It also allows the complaining party to bring a civil action if the complaint is not administratively resolved within 30 days. *Id.* at 207 n.4, 209. In *Trafficante* HUD had accepted, but was unable to resolve within 30 days, a complaint filed by residents of the Parkmerced apartment complex who alleged that they were denied the benefits of interracial associations because of racial discrimination practiced by the management of the complex. *Id.* at 207-08. This Court held that these § 3610 complainants had standing to file suit to enforce the Fair Housing Act. The Court did not explicitly address § 3612, the *Trafficante* plaintiff's other claimed jurisdictional base. *Id.* at 212.

This omission led the Ninth Circuit in *TOPIC* to construct a novel distinction between § 3610 and 3612. The latter states simply:

> The rights granted by section 803, 804, 805, and 806 [§§ 3603, 3604, 3605, and 3606] may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. . . .

Notably, there is no language restricting access to the judicial process to enforce the provisions of the Act. Yet the history of the 1968 legislation demonstrates that when Congress desired to construct such limitations, it did so explicitly. *See* pp. 13-14, *supra* (amendment of Sen. Allott). Moreover, as we have explicated at some length above (§ I-B, pp. 11-18), § 804 of the Act (42 U.S.C. § 3604) is broad in its coverage and protects the rights of *any person*; only the right to consummate a transaction for the purchase or rental of property requires that the person have a *bona fide* intention to buy or lease. It would be extremely anomalous, then, to construe § 3612 more narrowly than § 3610.[21]

Petitioners and the Ninth Circuit can support their interpretation of the statute only by assuming that Congress could not have intended to have "established an administrative remedy and authorized plaintiffs, at their discretion, to bypass it." *Village of Bellwood* v. *Gladstone Realtors*, *supra*, 569 F.2d at 1020. Such an interpretation, petitioners assert, would ignore "a cardinal rule of statutory construction: that the sections of a statute must be construed 'in connection with every other . . . section so as to produce a harmonious whole.' 2A C. Sands, *Sutherland Statutory Construction* [sic] § 46.05, p. 56 (4th ed. 1973)." Brief for Petitioners at 19. On this assumption, petitioners develop a set of theories about a supposed Congressional preference for the administrative remedy under § 3610 which would be inconsistent with

[21] Petitioners' suggestion that the language of § 3612 is narrower than that of § 3610 (Petitioners' Brief at 22-29) simply defies reasoned analysis. The two portions of the law use entirely different phraseology and the mere absence of the words "person aggrieved" from a section which allows "[any] rights granted" under the law to be enforced "by civil actions" signifies absolutely nothing. The language of § 3612 just as much as that of § 3610 indicates an intention to define standing as broadly as the Constitution permits.

immediate recourse to the judicial process under § 3612. *Id.* at 20-21.

These arguments are properly addressed to the Congress itself in connection with reconsideration of the Act. They are out of place here because they simply do not reflect the reality of the statute which has already been enacted. There is nothing "inharmonious" about the granting of alternative administrative and judicial remedies under §§ 3610 and 3612. Indeed, Congress left to the determination of the courts in individual cases the question whether the administrative process should be favored, by stating in § 3612 a proviso:

> That the court shall continue such civil case brought pursuant to this section or section 810(d) [§ 3610] from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court; . . . .

Under the explicit provisions of § 3612, therefore, a court may continue an action filed under that section to permit conciliation efforts by a local or State agency even though no complaint has been made to HUD. And the Congress failed to include in this section either a requirement of mandatory pre-filing with the Secretary of HUD or of mandatory reference to HUD by the district courts.[22]

Although petitioners hypothesize a conflict between the holding below and the intention of the Congress, they point to no indications in the legislative history of the statute demonstrating that hypothetical Congressional

[22] *Compare* 42 U.S.C. § 2000e-5(f) (Title VII employment discrimination suit may be brought only after filing charge with EEOC; no provision parallel to § 3612 in Title VII).

purpose. To the contrary, the legislative history demonstrates conclusively that the administrative and judicial remedies were to be independent alternatives (except as provided in § 3612's conditional clause, quoted above). The Senate, in which chamber the bill's fair housing provisions originated (*see* p. 13, *supra*), in fact distrusted an exclusively administrative remedy and wished to assure access to the courts. After the final version of the bill was passed, Senator Hruska expressed the sentiment forcefully:

> The improvements in this bill are many. For example, in its original provisions, the housing measure bypassed our judicial system. It would have settled all disputes in this field, including the validity of title to real estate, through administrative processes with no effective rights of appeal—a concept which I hope will never again intrude itself upon this body.

114 CONG. REC. 5990 (March 11, 1968). When the bill reached the House, its proponents and opponents alike viewed §§ 810 and 812 as creating alternative remedial tools. Judiciary Committee Chairman Celler provided a summary of the bill's major provisions, in the course of which he stated, 114 CONG. REC. 9560 (April 10, 1968):

> Enforcement: HR 2516 provides three methods of obtaining compliance: administration conciliation, private suits, and suits by the Attorney General for a pattern or practice of discrimination.
>
> . . .
>
> Private civil actions: In addition to administrative remedies, the bill authorizes immediate civil suits by private persons within 180 days after the alleged discriminatory housing practice occurred. . . .

Representative Cramer opposed acceptance of the Senate version *in toto*, and presented a list of reasons why the bill in his view should have been sent to a Conference Committee, 114 CONG. REC. 9567 (April 10, 1968). One of these was as follows, *id.* at 9568:

> (9) Open Housing as drafted in the Senate is unworkable in that it is implemented on the Federal level only through HUD with powers only to persuade, conciliate and regulate. The only other remedy is through civil action in U.S. or State courts [then describing provision for award of attorneys' fees to plaintiffs only] . . . .

Minority Leader Ford pointed to a Judiciary Committee staff memo comparing the bill originally passed by the House and the Senate substitute, *id.* at 9609, including this description, *id.* at 9612:

> Section 812 states what is apparently an alternative to the conciliation-then-litigation approach above stated: an aggrieved person within 180 days after the alleged discriminatory practice occurred, may, without complaining to HUD, file an action in the appropriate U.S. district court.

No disagreement with these conclusions was ever voiced, and as noted earlier, the House passed the Senate version of the bill without change.

The Ninth Circuit's elaboration of different functions for civil actions brought under §§ 3610 and 3612 (resting on the need for emergency relief), 532 F.2d at 1376, represents little more than that court's views on a policy issue which has been settled by the Congress. Because the language and legislative history of the 1968 Fair Housing Act establish §§ 3610 and 3612 as truly independent and alternative remedial approaches to compliance with the Act, it is improper for the federal courts to place additional limits upon the right to sue under § 3612. Appropriate judicial restraint and respect for Congress' authority was exercised by the court of appeals in the instant matter and by the numerous other courts which have refused to follow *TOPIC*. *See* Brief for Respondents in Opposition, at 16. The result they reached should be affirmed and this Court should specifically disapprove the *TOPIC* construction.

Conclusion

For the foregoing reasons, *amicus* respectfully submits that the judgment below should be affirmed.

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